

**Memorandum of Decision: 01-20190029R  
Individual Income Tax  
For the Years 2015 and 2016**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

**HOLDING**

Out-of-State Individuals provided sufficient documentation permitting them to "net" their "per session" gambling losses and gambling winnings on a "per session" basis in determining the amount of "other income" reported on their Indiana income tax return.

**ISSUE**

**I. Individual Income Tax - Gambling Income.**

**Authority:** IC § 6-3-1-3.5(a); IC § 6-3-2-2(a); I.R.C. § 165(d); Rev. Rul. 54-339, 1954-2 C.B. 89; I.R.S. Adv. Mem. 2008-011; Final Order Denying Refund 01-20180755R (June 29, 2018); Letter of Findings 01-20160459P (December 2, 2016).

Taxpayers argues that the Department erred in denying them a refund of individual income tax on the ground that Taxpayers had not presented sufficiently reliable documentation justifying an offset of their gambling "losses" against their gambling "winnings."

**STATEMENT OF FACTS**

Taxpayers are individuals who live in Illinois but file Indiana income tax returns. In 2008, Taxpayers filed amended Form IT-40X tax returns amending their 2015 and 2016 Indiana Part-Year and Full-Year Nonresident IT-40 PNR income tax returns seeking a refund of income tax withheld on Indiana gambling winnings. On their amended returns, Taxpayers reported approximately \$900,000 in winnings and \$928,000 in gambling losses. On the same returns, Taxpayers "offset" their Indiana gambling losses against their gambling winnings resulting in total losses of approximately \$28,000.

The Indiana Department of Revenue ("Department") reviewed the return, rejected Taxpayers' gambling calculations, and denied the originally claimed refund. In a letter addressed to Taxpayers, the Department explained:

The Indiana Department of Revenue reviewed your claim for a refund and must deny it because a federal schedule C will need to be sent if the customer is claiming they are a professional gambler.

Taxpayers disagreed with the Department's conclusion and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers explained the basis for the protest. This Memorandum of Decision results.

**I. Individual Income Tax - Gambling Income.**

**DISCUSSION**

In its initial review, the Department concluded that Taxpayers were not entitled to the refund because Taxpayers were not "professional gamblers." As a result, Taxpayers erred in their calculations. Taxpayers disagree admitting that they were not professional gamblers but that their calculations were based on relevant federal tax guidelines.

The issue is whether Taxpayers have presented sufficient information justifying their assertion that they are entitled to offset their daily gambling losses against their daily gambling winnings.

In general, IC § 6-3-1-3.5(a) provides that federal adjusted gross income is the starting point for determining

Indiana adjusted gross income for individuals. For nonresidents, IC § 6-3-2-2(a) provides that income derived from Indiana sources is subject to Indiana income tax under the permissible tax guidelines.

For federal income tax purposes, "Losses from wagering transactions shall be allowed to the extent of the gains from such transactions." I.R.C. § 165(d). "For Federal income tax purposes, all wagering gains must be included in gross income. Losses therefrom, by a taxpayer who is not in the trade or business of gambling, are not deductible in determining adjusted gross income because such losses do not come within the provisions of section 22(n) [now I.R.C. § 62] of the Internal Revenue Code. Nor are the losses deductible from adjusted gross income in determining net income where the taxpayer has elected to use the standard deduction." Rev. Rul. 54-339, 1954-2 C.B. 89. The effect of this federal tax treatment is that Indiana does not permit a deduction for wagering losses except for professional gamblers.

Nonetheless, the Department's more detailed position on the particular issue here is addressed in Letter of Findings 01-20160459P (December 2, 2016), 20170222 Ind. Reg. 045170101NR, and need not be repeated here in exhaustive detail. It is sufficient to quote the December 2016 Letter of Findings which concludes:

[T]he reasoning stated in the 2008 IRS memorandum—that aggregating winnings and losses occurring in a particular period, then including the net winnings (winnings minus losses whenever winnings exceed losses) as income—is the proper measure for determining wagering gains for federal income tax purposes . . .

The 2008 IRS memorandum cited above is I.R.S. Adv. Mem. 2008-011 (December 12, 2008). The December 2016 Letter of Findings further explains:

In the [IRS] memorandum, an example was proposed with a taxpayer who played slot machines; the taxpayer was not a professional gambler. In the fact scenario presented, the taxpayer had some winning days (e.g., she entered with \$100 and left with \$500) and some losing days (e.g., she entered with \$100 and left with nothing). The issue was whether the taxpayer had to count each winning machine pull (less wager on the pull) as income or whether the taxpayer could net winnings and losses each day in determining the taxpayer's income. The 2008 memorandum concluded that netting upon redemption of tokens or money was appropriate in the scenario presented.

The December 2016 Letter of Findings found the Memorandum's approach "persuasive" and the Department here finds no reason to depart from that reasoning.

Taxpayers argue that the Department's decision denying the refund was wrong because "[w]e are NOT professional gamblers and did not indicate such on our Federal Tax Returns." Taxpayers state that the only Indiana income reported on their Indiana returns was from "casual gambling" at an Indiana casino. Taxpayers explain:

Taxpayers are entitled to a full refund of taxes paid to Indiana for tax year 2015 (and 2016) as they had no reportable gaming income in the State of Indiana. Taxpayers suffered losses in excess of the reported Indiana W2G winnings for gaming activity occurring solely in the State of Indiana.

Taxpayers further explain:

[They] record each session win/loss in accordance with Federal tax guidelines: each maintaining a contemporaneously prepared gaming journal. Furthermore, [T]axpayers maintain all banking & credit records of withdrawals and deposits made for gaming purposes on a per session basis in accordance with Federal guidelines.

In this case, Taxpayers have provided the Indiana casino's daily gambling activity report, the casino's ATM per-session receipts and deposits reflecting net losses each year, the Taxpayers' own handwritten journal summarizing net winnings and losses by date and location, and Taxpayers' federal 1040 "calculation of Indiana [adjusted gross income]."

The Department concludes that the documentation provided is sufficient for the Department to substantiate Taxpayers' calculation of the net winnings and losses attributable to Indiana gambling activities and - after verifying the calculation - to issue Taxpayers any consequent refund.

On the issue of whether Taxpayers have provided sufficiently reliable information on which to base their calculation of net gambling winnings and net losses, Taxpayers' protest is sustained. However, this Memorandum

of Decision does not address the actual calculation of those winnings and losses and takes no position on any other issue which may be contained in the 2015 and 2016 returns.

### **FINDING**

On the sole issue addressing the sufficiency of Taxpayers' documentation, Taxpayers' protest is sustained.

February 27, 2019

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